

APPEAL NO. 010287

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 17, 2001, the hearing officer resolved the disputed issues by determining that because the appellant (claimant) failed to show by a preponderance of the evidence that he sustained damage to the physical structure of his back in an incident at work on _____, he does not have a compensable injury, and that because he does not have a compensable injury he does not have disability. The claimant appeals these determinations on evidentiary sufficiency grounds. The file does not contain a response from the respondent (self-insured).

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable back injury at work on _____, and that he therefore did not have disability. The claimant, employed by the self-insured as a bus driver, testified that when he drove bus [No.] over a railroad track crossing on _____, the seat "bottomed out" and that shortly thereafter he felt severe low back pain and called the dispatcher to report the injury. He said he brought the bus to a complete stop before proceeding across the tracks. Dr. F, an orthopedic surgeon who reviewed the medical reports (including the reports of the treating doctor and a doctor appointed by the Texas Workers' Compensation Commission to examine the claimant) and the specifications of the air cushioned seat, testified that in his opinion the claimant did not sustain a low back injury from the bus seat, which is designed to move only four inches up and down on a cushion of air. The self-insured's maintenance supervisor said he checked the maintenance records of the bus in question and that there was no recorded complaint about the seat, which was installed in 1998. The director of safety and training testified that he drove the bus in question over the railroad crossing several times after the claimant reported the injury and that the seat did not feel unusual or "bottom out." In a videotape of this bus being driven across the same railroad crossing several times, any bouncing of the bus is barely discernable.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v.

Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate-reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge